

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ANDRE JACOBS,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 02-1703
)	
C.O.T. HECK, et al.,)	
)	
Defendants.)	

ORDER

Plaintiff Andre Jacobs ("plaintiff") filed a motion for a new trial or, in the alternative, relief from judgment (Doc. No. 172) with this court on March 11, 2005. On March 14, 2005, plaintiff filed a notice of appeal to the United States Court of Appeals for the Third Circuit (Doc. No. 176). On April 14, 2005, defendant Corrections Officer Heck ("defendant") filed a response to defendant's motion. (Doc. No. 184). On April 4, 2005, Plaintiff filed a motion requesting an extension of time to file a brief in support of his motion for a new trial. (Doc. No. 182). On January 31, 2006, this court granted plaintiff's motion for an extension of time. (Doc. No. 188). Plaintiff was granted an additional 30 days in which to file a brief in support of his motion. Plaintiff sent a notice to this court dated February 4, 2006, that he is under investigation for a crime committed at the Allegheny County Jail and is unable to access any of his legal materials. Plaintiff, therefore, is unable to file a brief or reply to defendant's response to plaintiff's motion for a new trial.

Upon a review of plaintiff's motion and defendant's response, the court will deny plaintiff's motion without prejudice. Plaintiff raises issues addressed by the court's rulings from the bench during trial or which could have been raised, but were not raised and are thus deemed

waived. “A principle that strikes very deep is that a new trial will not be granted on grounds not called to the court’s attention during the trial unless the error was so fundamental that gross justice would result.” 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 2805, at 57-58 (2d ed. 1995). In addition, this case is on appeal to the United States Court of Appeals for the Third Circuit. Plaintiff is free to raise the issues in his motion for a new trial on appeal. The court finds that further delay of plaintiff’s appeal pending further briefing is not in the best interests of justice.

Therefore, this 21st day of March, 2006, IT IS HEREBY ORDERED that the plaintiff’s motion for a new trial (Doc. No. 172) is **DENIED** WITHOUT PREJUDICE.

BY THE COURT:

/s/ Joy Flowers Conti
Joy Flowers Conti
United States District Judge

cc: Christian D. Bareford
Office of the Attorney General
564 Forbes Avenue
6th Floor, Manor Complex
Pittsburgh, PA 15219

Andre Jacobs
125883
Allegheny County Jail
950 Second Avenue
Pittsburgh, PA 15219